STATE OF MICHIGAN

COURT OF APPEALS

KAREN LEONARD,

Plaintiff/Appellee/Cross-Appellant,

V

WAYNE STATE UNIVERSITY,

Defendant/Appellant/Cross-Appellee.

UNPUBLISHED
August 5, 2008

No. 273129
WCAC
LC No. 01-000139

Before: Saad, P. J., and Owens and Kelly, JJ.

PER CURIAM.

This worker's compensation appeal arises out of the exacerbation of plaintiff's preexisting asthma when defendant relocated her office to a building that was extraordinarily damp, had black mold and was subject to extreme changes in temperature. Although plaintiff's doctor eventually released her to return provided her work environment was free from mold, odors and excessive temperatures, defendant in the meantime had restructured plaintiff's department and her former job was not available. Plaintiff, an administrative assistant, has been unable to obtain subsequent employment with a different employer. Plaintiff's expert witness offered several reasons for her failure to be hired, including her restricted working conditions as a result of the work-related exacerbation of her asthma. Because plaintiff's medical condition was a reason she has not obtained reemployment, the magistrate and the Worker's Compensation Appellate Commission (WCAC) found that she is disabled and entitled to benefits.

Defendant sought leave to appeal in this Court, which was denied. *Leonard v Bd of Governors of Wayne State University*, Unpublished order of the Court of Appeals, entered December 16, 2005 (Docket No. 264061). In lieu of granting leave to appeal, our Supreme Court remanded to us for consideration as on leave granted. *Leonard v Bd of Governors of Wayne State University*, 477 Mich 858; 721 NW2d 168 (2006). We affirm.

I. Basic Facts

Plaintiff, whose date of birth is July 17, 1942, began working for defendant in the late 1960's or early 1970's as a student assistant. In 1974, she increased her hours and divided her time between the Special Programs Office and the McGregor Conference Center, working as a receptionist and performing clerical and accounting work. In 1980, she became a full-time employee; she was the administrative assistant to the associate director of McGregor. She was

promoted in 1984 and she handled budgets, made management decisions and gained experience in marketing and sales. In 1991, her financial responsibilities ended and in 1996, her input on management decisions ceased. Plaintiff also was active in civic organizations. In 1995, she was the President of the Women's Economic Club. In 1996, she volunteered at the Karmanos Cancer Institute. She has been a board member for the Blue Care Network.

In 1991, defendant changed plaintiff's work location from the Community Arts Building (CAB) to the McGregor Conference Center. Plaintiff experienced breathing problems, with coughing and wheezing. Plaintiff explained that McGregor, given its many floor-to-ceiling windows, had a constant problem with moisture, condensation and water puddles from October through March of each year. In 1995, the carpet was replaced; the old carpet was covered with black mold. The building also had a musty odor.

In 1994 or 1995, plaintiff began losing time from work because of her breathing problems. She suffered from pneumonia. She was placed on steroids and other medications. When she returned to work, her symptoms would reappear. In the winter of 1995, she determined that her breathing problems were connected with her office in McGregor and requested to be moved back to the CAB. Defendant initially denied her request. Plaintiff asked that McGregor be tested for allergens and the report showed that penicillium was present. Plaintiff contends that she was verbally informed that aspergillus, a fungus, also was found, although that was not reflected in the written report. Plaintiff informed her supervisor that she was allergic to penicillium and aspergillus.

In December of 1996, defendant moved plaintiff's office back to the CAB. She was still exposed to McGregor, however, when she attended meetings, gave tours and coordinated special events. Plaintiff experienced breathing problems again in March of 1997 and she went on medical leave. Her final day of work for defendant was March 18, 1997. She has not worked for a salary since, although she has performed some volunteer work.

In July of 1997, plaintiff filed a claim for worker's compensation benefits, which defendant denied. In the autumn of 1997, defendant restructured the staff at McGregor and eliminated plaintiff's position. Defendant terminated plaintiff's employment on October 24, 1997.

In November of 1997, plaintiff's doctor released her to return to work with restrictions that she would not be exposed to mold, strong odors or extreme temperatures. Plaintiff, however, could not return to her prior job because defendant had eliminated it and because it would expose her to McGregor.

The magistrate first found that plaintiff's employment at McGregor exacerbated her preexisting asthma. As a result of that finding, the question before the magistrate was whether plaintiff could be reemployed given her work-related medical condition. With regard to her job search, the magistrate noted that plaintiff began looking for work in June of 1998. During her job search, plaintiff applied for jobs that were above and below her skill level. She testified that she sent out 75-100 resumes between June of 1998 and May of 2000. From May of 2000 through July of 2000, she sent out 60 additional resumes. She testified she sought help from a job placement agency. Defendant's vocational expert, Michael Rosko, believed that plaintiff's job search initially was ineffective because she demanded a starting salary that was too high and

she presented herself as overqualified for the jobs she sought. Plaintiff's expert, Guy Hostetler, disagreed.

The magistrate issued an open award of benefits to plaintiff and found that plaintiff's preexisting asthma condition was aggravated by her employment with an injury date of March 18, 1997, and that plaintiff's work exposure to molds contributed to the progression of her underlying disease process. Adopting plaintiff's treating physician's testimony, the magistrate determined that plaintiff demonstrated that her environment at work contributed to the progression of her asthma and ABPA. The magistrate rejected defendant's contention that the plaintiff had been avoiding finding alternative employment, noting that neither the defendant nor any other employer has given the plaintiff a bona fide offer of reasonable employment.

Defendant appealed to the WCAC, arguing that plaintiff should have received at most a closed award of benefits and arguing that plaintiff was avoiding work. In January of 2003, the WCAC remanded to the magistrate to complete the record pursuant to the then-recently-decided *Sington v Chrysler Corp*, 467 Mich 144; 648 NW2d 624 (2002).

In June of 2004, the magistrate issued a supplemental opinion. The magistrate included additional findings regarding plaintiff's pulmonary condition and determined that due to plaintiff's increased sensitivity to penicillium and the advancement of the ABPA to a stage IV, the underlying pathology of plaintiff's allergies, asthma, and ABPA were aggravated by her exposure to the mold at work, thereby contributing to plaintiff's need for work restrictions. The magistrate determined that plaintiff suffers from a work-related medical impairment and would need a clean work environment, without noxious stimuli, extreme temperatures of heat and cold, as well as no exposures to excessive moisture and mildew.

As for plaintiff's attempts to obtain reemployment, the magistrate found that while plaintiff's job search was not as vigorous as defendant would have liked, he found it was adequate to show she was not avoiding work:

> Plaintiff has followed up with job leads provided by Mr. Rosko [defendant's vocational expert]. As of the first trial, she had applied for work at Comcast and Northeo Management Company. She obtained interviews as Karmanos Cancer Institute and the Cystic Fibrosis Foundation. Since then, she has continued to send out her resume. She obtained job leads from Crain's, the Macomb Daily, Detroit Newspapers and the Women's Economic Club. She has interviewed at Lawrence Institute, Dennis Uniform, Judson Center, Mainstreet, Matrix Human Services, and Marriott Hotel. She has still not had any job offers.
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> It seems like plaintiff should be able to find employment, since all she needs is a clean work environment. Plus, she works in an office, not an industrial setting. Mr. Hostetler [plaintiff's vocational expert] attributed plaintiff's long-term unemployment to many factors, such as: not having an advanced degree, working for one employer her entire career, her age (now – 62), having a significantly higher prior wage, being on workers' compensation and needing work restrictions. I accept his explanation for her unemployment.

> I find plaintiff has met her burden of proof, showing she has suffered a limitation of her maximum earning capacity in work suitable to her qualifications and training. She is entitled to continuing benefits consistent with the prior Order. This limitation is directly attributable to the aggravation of her pulmonary problems while working at WSU. She has searched for work beneath, above and at the level of her qualifications. There is no indication that she has retained a residual earning capacity.

Thus, the magistrate's supplemental opinion confirmed the open award of benefits to plaintiff.

Defendant again appealed to the WCAC, arguing that plaintiff's job skills should lead to the conclusion that a job is available. The WCAC rejected that approach, noting that *Sington* looked at more than an employee's physical qualifications and that *Sington* instructed that a consideration was whether "such jobs were in fact reasonably available to [an employee.]" The WCAC observed that *Sington* did not merely hold that a plaintiff must be able to "perform" a job, but also held that a job must be "reasonably available." The WCAC also noted that *Sington* spoke in terms of a "regular job" being available in the ordinary marketplace. The WCAC concluded:

> Thus, as we have noted on several occasions, in order to be considered under a *Sington* analysis as a job within claimant' qualifications and training, the job must be reasonably available to her. The magistrate correctly found that given the somewhat unique facts of the record, even though there may have remained some jobs within plaintiff's qualifications and training she could do, none were reasonably available. Affirmed.

Defendant filed an application seeking leave to appeal. This Court denied the application for lack of merit in the grounds presented, *Leonard v Wayne State University* (Docket No. 264061). Defendant appealed to our Supreme Court, which has remanded for this Court to consider as on leave granted. Plaintiff then filed a cross appeal, raising ten issues.

II. Standards of Review

Review under the WDCA is limited. *Rakestraw v General Dynamics Land Systems,* 469 Mich 220, 224; 666 NW2d 199 (2003). "Findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law." Const 1963, art 6, § 28. When this Court reviews a decision of the WCAC, it does not begin by considering the magistrate's decision, but looks first to that of the WCAC. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 709; 614 NW2d 607 (2000). If any evidence supports the WCAC's factual findings and if it did not misapprehend its administrative appellate role in reviewing magistrate's decision, then this Court must treat the WCAC's factual findings as conclusive. *Id*. at 709-710. The WCAC is authorized by MCL 418.861a(14) to "make independent findings of fact, regarding issues that have been addressed or overlooked by the magistrate, as long as the record is sufficient for administrative review and does not prevent the WCAC from reasonably exercising its reviewing function without resort to speculation." *Mudel, supra* at 730.

The WCAC is charged with ensuring that the findings of fact are supported by the requisite evidence. *Id.* It must determine whether the magistrate's decision is supported by competent, material and substantial evidence by reviewing the entire record and performing a qualitative and quantitative analysis of the evidence. *Id*. at 699; MCL 418.861a(4), (13). This Court must "ensure that the WCAC properly recognized and exercised its administrative appellate role." *Id*.

As the Court expressed in *Holden v Ford Motor Co*, 439 Mich 257, 269; 484 NW2d 227 (1992):

> If it appears on judicial appellate review that the WCAC carefully examined the record, was duly cognizant of the deference to be given to the decision of the magistrate, did not "misapprehend or grossly misapply" the substantial evidence standard, and gave an adequate reason grounded in the record for reversing the magistrate, the judicial tendency should be to deny leave to appeal or, if it is granted, to affirm, in recognition that the Legislature provided for administrative appellate review by the seven-member WCAC of decisions of thirty magistrates, and bestowed on the WCAC final fact-finding responsibility subject to constitutionally limited judicial review.

Finally, this Court may review questions of law involved with any final order of the WCAC. MCL 418.861a(14); *Holden supra* 439 Mich 263. The WCAC's decision may be reversed if it operated within the wrong legal framework or based its decision on erroneous legal reasoning. MCL 418.861a(14); *DiBenedetto v West Shore Hosp*, 461 Mich 394, 401-402; 605 NW2d 300 (2000).

III. Disability

Defendant claims that the WCAC erred in ruling that plaintiff was disabled under *Sington v Chrysler Corp*, 467 Mich 144; 648 NW2d 624 (2002). We disagree. The record contains evidence to support the magistrate's and the WCAC's finding that plaintiff's work-related condition was a reason for her failure to find reemployment and we will not disturb that finding.

"[T]he plain language of MCL 418.301(4) indicates that a person suffers a disability if an injury covered under the WDCA results in a reduction of that person's maximum reasonable wage earning ability in work suitable to that person's qualifications and training." *Sington* at 155. Thus, an employee is not disabled if, because of a work-related injury, he or she can no longer perform a job that pays the maximum salary in light of his or her qualifications and training, but can perform an equally well-paying job suitable to his or her qualifications and training. *Id*.

In *Stokes v DaimlerChrysler Corp*, __ Mich __ (Docket No. 132648, issued June 12, 2008), our Supreme Court recently clarified the proofs necessary to establish a prima facie case of disability. The Supreme Court stated that a claimant may not merely show the inability to perform a previous job; rather a claimant must first show a work-related injury. *Id. s*lip op 1, 14. Thereafter, a claimant must establish that the injury caused a reduction of his or her maximum wage-earning capacity in jobs suitable to his or her qualifications or training. *Id.* at 14. To establish the latter, the Court held that a claimant must present evidence on the following factors:

(1) The claimant must disclose all of his qualifications and training;

(2) the claimant must consider other jobs that pay his maximum pre-injury wage to which the claimant's qualifications and training translate;

(3) the claimant must show that the work-related injury prevents him from performing any of the jobs identified as within his qualifications and training; and

(4) if the claimant is capable of performing some or all of those jobs, the claimant must show that he cannot obtain any of those jobs.

If the claimant establishes all these factors, then he has made a prima facie showing of disability satisfying MCL 418.301(4), and the burden of producing competing evidence then shifts to the employer. The employer is entitled to discovery before the hearing to enable the employer to meet this production burden. While the precise sequence of the presentation of proofs is not rigid, all these steps must be followed. [*Stokes*, at 32.]

While the employer is obviously "in the best position to know what jobs are available within that company and has a financial incentive to rehabilitate and re-employ the claimant," *id.* at 16, a claimant will have sustained his or her burden of proof "by showing that there are no reasonable employment options available for avoiding a decline in wages." *Id.* at 15.

A. Work-Related Injury

Plaintiff's claim of work-related injury is the aggravation of her asthma. In *Rakestraw, supra*, our Supreme Court held that a plaintiff must produce evidence of the injury that is medically distinguishable from the preexisting nonwork-related condition to establish a compensable personal injury. *Id.* at 234.

The magistrate found that plaintiff suffered a work-related condition, the aggravation of her preexisting condition, asthma. The magistrate stated that due to plaintiff's increased sensitivity to penicillium, as well as the advancement of her ABPA, plaintiff's exposure at work aggravated her underlying pathology of allergies, asthma and ABPA. The magistrate also found that plaintiff could not work in McGregor because she required a clean work environment, which McGregor did not offer. In turn, the WCAC noted that the magistrate found that the exposure at work caused a pathological change. Thus, the WCAC concluded that plaintiff met the requirement in *Rakestraw, supra*, that she prove her work caused a medically-distinguishable condition from her preexisting state. Not only will we decline to reach a different result where the record contains competent evidence to support the finding that her employment aggravated her preexisting condition, *Mudel, supra,* the WCAC's determination "is conclusive because there is no evidence of fraud." *Stokes, supra* at 19, citing *Mudel, supra* at 701.

B. Reduction of Maximum Wage-Earning Capacity

After finding a work-related injury, the magistrate and WCAC "should consider whether the [work-related] injury has actually resulted in a loss of wage earning capacity in work suitable to the employee's training and qualifications in the ordinary job market." *Sington, supra,* at 158. In making this determination, the magistrate and WCAC consider:

> the particular work that an employee is both trained and qualified to perform, whether there continues to be a substantial job market for such work, and the wages typically earned for such employment in comparison to the employee's wage at the time of the work-related injury. If the employee is no longer able to perform any of the jobs that pay the maximum wages, given the employee's training and qualifications, a disability has been established under § 301(4). [*Id*. at 157.]

Applying the *Stokes* factors set forth *supra*, we hold that the WCAC did not err in affirming the award of benefits to plaintiff.

With regard to the first factor, disclosure of qualifications and training, we would first note that plaintiff was a long term employee of defendant and her work experience since the late 1960's or early 1970's was exclusively with defendant. As such, her qualifications and training were not significantly in dispute, and her salary range was relatively higher than that of comparable employment. Plaintiff testified and submitted evidence as to her education, vocational and volunteer services. Both parties retained and presented testimony from vocational experts. The magistrate detailed plaintiff's work qualifications and training at length; the record supports that plaintiff is qualified and able to perform administrative work, which translates into office/clerical employment. The magistrate found that plaintiff had skills in working with the public, customer service, event planning and promotion, office administration, bookkeeping, management, problem solving, leadership, communication, marketing and sales. The magistrate identified plaintiff as "very accomplished."

As to the second factor, considering other jobs that pay maximum pre-injury wages to which a claimant's qualifications and training translate, our Supreme Court explained that a claimant must prove what jobs, if any, he or she is qualified and trained to perform within the same salary range as his maximum earning capacity at the time of the injury. *Stokes*, *supra* at 14, citing *Sington*, *supra* at 157. It further noted that:

> The statute does not demand a transferable-skills analysis and we do not require one here, but the claimant must provide some reasonable means to assess employment opportunities to which his qualifications and training might translate. *This examination is limited to jobs within the maximum salary range.* There may be jobs at an appropriate wage that the claimant is qualified and trained to perform, even if he has never been employed at those particular jobs in the past. The claimant is not required to hire an expert or present a formal report. For example, the claimant's analysis may simply consist of a statement of his educational attainments, and skills acquired throughout his life, work experience, and training; the job listings for which the claimant could realistically apply given his qualifications and training; and the results of any efforts to secure employment. The claimant could also consult with a job-placement agency or career counselor to consider the full range of available employment options. Again, there are no absolute requirements, and a claimant may choose whatever method he sees fit to prove an entitlement to workers' compensation benefits. A claimant sustains his burden of proof by showing that there are no reasonable employment options available for avoiding a decline in wages. [Emphasis added, *id*. at 14-15, (citations omitted.)]

The record reflects that plaintiff has submitted her resume to a myriad of employers without success. She identified and attempted to obtain alternate employment including jobs that were above, below and consistent with her experience and training. The vocational experts presented by the parties also identified other jobs that would fit plaintiff's qualifications. However, of all the employment opportunities identified, none were in the maximum salary range that plaintiff earned while employed with defendant. Even defendant's expert testified that a realistic range to be paid in other employment would only be between $30,000 and $35,000 – significantly less than plaintiff's wage at the time of injury. Defendant did not show that plaintiff had acted in bad faith during her job hunt and the magistrate specifically found that plaintiff was not avoiding work, noting that neither defendant, nor or any other employer, had given plaintiff a bona fide offer of reasonable employment. Although defendant challenges whether plaintiff's efforts to obtain employment were sufficient, the magistrate found that they were. The magistrate found plaintiff to be credible and that her job-seeking efforts have not been an attempt to reach beyond her skill level or her salary level. We give deference to the magistrate's credibility determination and do not substitute our judgment for that of the magistrate or the WCAC.

With regard to the third *Stokes* factor, whether the work-related injury prevents a claimant from performing any of the jobs identified as within his or her qualifications and training, we again conclude sufficient evidence supports the WCAC's findings. Both the magistrate and WCAC determined that plaintiff could still perform a job within her qualifications, provided she was provided a clean work environment free from noxious fumes, mold and temperature extremes.

Finally, as to the forth Stokes factor, the WCAC did not err in concluding that the plaintiff was unable to obtain any of the jobs identified at trial to be within her qualifications and training.

In his supplemental opinion, the magistrate found:

> The evidence reflects plaintiff began looking for other employment in June of 1998 (Exhibit L). For the most part, she has consistently looked for work within her qualifications and training. (When she was revising her resume and cover letter, she did not seek employment and she was unable to document her job search during the first part of 1998). Her search has not been as vigorous as defendant would like, but I find it is adequate to show she is not avoiding work. In *Stanton v Great Lakes Employment*, 2003 ACO #129, defendant argued if plaintiff had looked harder and in a wider geographical area, he would have found something. However, the Appellate Commission concluded that plaintiff's unfruitful job search, along with the severity of his disability (crushing injury to the left foot), resulting in a *prima facie* case of disability.
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> Plaintiff has followed up with job leads provided by Mr. Rosko [defendant's vocational expert]. As of the first trial, she had applied for work at Comcast and Northeo Management Company. She obtained interviews as Karmanos Cancer Institute and the Cystic Fibrosis Foundation. Since then, she has continued to send out her resume. She obtained job leads from Crain's, the Macomb Daily, Detroit Newspapers and the Women's Economic Club. She has interviewed at

Lawrence Institute, Dennis Uniform, Judson Center, Mainstreet, Matrix Human Services, and Marriott Hotel. She has still not had any job offers.

* * *

It seems like plaintiff should be able to find employment, since all she needs is a clean work environment. Plus, she works in an office, not an industrial setting. Mr. Hostetler [plaintiff's vocational expert] attributed plaintiff's long-term unemployment to many factors, such as: not having an advanced degree, working for one employer her entire career, her age (now – 62), having a significantly higher prior wage, being on workers' compensation and needing work restrictions. I accept his explanation for her unemployment.

I find plaintiff has met her burden of proof, showing she has suffered a limitation of her maximum earning capacity in work suitable to her qualifications and training. She is entitled to continuing benefits consistent with the prior Order. This limitation is directly attributable to the aggravation of her pulmonary problems while working at WSU. She has searched for work beneath, above and at the level of her qualifications. There is no indication that she has retained a residual earning capacity.

Defendant presented newspaper ads from 1999 through January of 2003 to show available jobs during that time frame. However, there is no indication this information was shared with plaintiff in a timely manner to see how she would have responded and what results she would have obtained by contacting these employers. I am convinced that plaintiff has regularly searched the same newspapers and she has responded to positions she thought were appropriate.

Defendant has asserted plaintiff could work as a secretary or a receptionist. However, her secretarial skills are out of date (she used a typewriter the last time she worked as a secretary) and she does not know shorthand. In terms of working as a receptionist, which most likely would pay a significantly lower wage, there has been no showing of available jobs willing to hire plaintiff. Her age and higher skill level may be an obstacle to this type of work. Plaintiff has asserted that she should not have to look for jobs beneath her level of accomplishments, however, *Peacock v General Motors Corp,* 2003 ACO #274 says suitable employment does not necessitate prior experience or require adequate prestige according to a skill level. The list of suitable jobs encompasses those jobs that afford a plaintiff an opportunity for consideration to be hired because he/she possesses the minimum experience, education and skill.

* * *

I find plaintiff has met her burden of proof, showing she has suffered a limitation of her maximum earning capacity in work suitable to her qualifications and training. She is entitled to continuing benefits consistent with the prior Order. This limitation is directly attributable to the aggravation of her pulmonary problems while working at WSU. She has searched for work beneath, above and

> at the level of her qualifications. There is no indication that she has retained a residual earning capacity.

The magistrate's findings were affirmed on appeal to the WCAC.

Keeping in mind our limited review of worker's compensation proceedings, *Mudel, supra* at 730, there was sufficient credible evidence to support the both the magistrate's and WCAC's factual findings. Plaintiff's expert opined that one of the reasons she has failed to find employment was that her work restrictions caused by her work-related medical condition, thus supporting the magistrate's finding that plaintiff's medical condition was a reason she has not obtained employment. The record also contains evidence that plaintiff has a work-related physical impairment that did not permit her to continue to work for the defendant in the "moldy and damp" environment at McGregor. The magistrate found that plaintiff had applied for numerous positions at different skill levels, and concluded based on the entire record, that plaintiff's work-related condition was a reason she could not obtain employment.

The record evidence supports the factual findings of the magistrate and WCAC. All factors articulated by our Supreme Court's recent decision in *Stokes, supra* were considered. Defendant was provided with the opportunity to participate in discovery and was able to vigorously contest plaintiff's proofs. The proper burden of proof was applied. We will not reverse the WCAC's decision where it did not operate within the wrong legal framework or did not base its decision on erroneous legal reasoning. MCL 418.861a(14); *DiBenedetto, supra* at 401-402. Accordingly, we find that the WCAC did not err in affirming the magistrate's award of benefits to plaintiff.

Finally, defendant also contends that plaintiff has retained a post-injury ability to earn and thus plaintiff's benefit award should have been reduced. We reject this argument where plaintiff has demonstrated that her impairment prevents her from obtaining all of the highest paying jobs that are suitable to her qualifications and training.

In light of our resolution of defendant's issues on appeal, we need not analyze plaintiff's issues on cross appeal.[1] Affirmed.

/s/ Henry William Saad
/s/ Donald S. Owens
/s/ Kirsten Frank Kelly

[1] Appellate courts need not address moot issues, *Commercial Union Ins Co v Liberty Mut Ins Co*, 426 Mich 127, 139; 393 NW2d 161 (1986), or search for authority to support a party's arguments, see *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). This is particularly true where plaintiff posits that the "already overly burdensome record" contains "more than enough evidence" to support the award of benefits. Further, most of plaintiff's remaining issues before this Court have not been preserved, where plaintiff did not raise them before the WCAC, MCL 418.861a(11). See *Schambers v National Redi Mix Inc*, 244 Mich App 546, 551-552; 624 NW2d 572 (2001). Workers' compensation issues raised for the first time in a pleading at this Court are not preserved for review, *Auto-Owners Ins Co v Amoco Product Co*, 468 Mich 53, 65-66; 658 NW2d 460 (2003). Moreover, as pointed out by defendant, plaintiff was the prevailing party below and thus has presented mainly hypothetical issues for this Court's review, but this Court does not issue advisory opinions on matters unnecessary to the resolution of the appeal, see *Rozankovich v Kalamazoo Spring Corp*, 44 Mich App 426, 428; 205 NW2d 311 (1973).